

REPORT TO THE GOVERNOR AND THE LEGISLATURE
ON 1996 ACTIVITIES OF THE DELTA PROTECTION COMMISSION

Section 29780 of the Delta Protection Act requires the Commission to submit an annual report to the Governor and the Legislature describing the progress in achieving the objectives of the Act. The annual report is to include an evaluation of the effectiveness of the regional plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in the Act; an update of the regional plan, using baseline conditions set forth in the original regional plan; and the status of the environmental thresholds established by the Commission in the original regional plan.

Status of the Delta Protection Commission:

The Legislature approved and the Governor signed into law SB 1673, which authorizes a two year extension of the Commission's sunset provision from January 1, 1997, until January 1, 1999. It was determined that additional time had been needed to prepare and adopt the Commission's "Land Use and Resource Management Plan for the Primary Zone of the Delta" (Delta Plan); and for local government processing of General Plan amendments. In addition to the two year time extension, the new legislation requires that the Commission meet at least once every two months and eliminates the ten percent surcharge on fines collected in the Primary Zone.

Status of the Land Use and Resource Management Plan:

The Commission adopted the Delta Plan on February 23, 1995.

Local governments submitted proposed General Plan amendments that would be needed to bring the local government General Plans into conformance with the Delta Plan. The City of Stockton proposed General Plan amendment has been reviewed; review was not completed in 1996.

In 1995, the Commission reviewed and approved local government proposals including: City of Pittsburg on October 26, 1995; Solano County on October 26, 1995; County of Yolo on October 26, 1995; Contra Costa County on December 14, 1995; and San Joaquin County on December 14, 1995. During 1996, the Commission reviewed and approved two additional local government proposals: City of Rio Vista on April 25, 1996; and Sacramento County on May 23, 1996.

During 1996, most of the local governments completed their General Plan amendments: San Joaquin County on July 9, 1996; Contra Costa County on July 23, 1996; City of Rio Vista on August 15, 1996; Sacramento County on September 11, 1996; and Solano County on October 22, 1996. Yolo County and City of Stockton's General Plan amendments are pending. No general plan amendment is needed by the City of Pittsburg.

The Commission spent a substantial amount of its time on the process to amend the Plan and adopt as a regulation language originally adopted in the Plan as Utilities and Infrastructure Policy P-3.

The language precludes construction of new sewage treatment plants and or sites for disposal of sewage effluent and sewage sludge in the Delta Primary Zone. A lawsuit was brought against the

Commission by Bio Gro, a division of Wheelabrator Industries. Bio Gro claimed the Commission's Policy P-3 was a regulation, and needed to be processed as such. On November 14, 1995, Judge Thomas Cecil agreed, and set aside the policy.

In February, 1996 the Commission directed staff to start the regulation adoption process with Office of Administrative Law. In March and April, three public hearings were held. On April 25, a special workshop session was held to review the results of the public hearings. In September, the Commission voted unanimously to adopt the amendment and proposed regulation. In December, the rulemaking file was submitted to Office of Administrative Law for review. The 30 working day review period will end January 28, 1997.

Effectiveness of the Plan: (See attached "Summary of Projects Approved in the Primary Zone, 1996" for more information.)

1. Preserving Agricultural Land in the Primary Zone:

The Commission received a briefing on conservation easements on agricultural lands, including new federal and state programs at the July 1996 meeting.

2. Conversion of Agricultural Land in the Primary Zone to Habitat:

In 1996, the several proposals to convert land from agriculture to wildlife habitat are still pending for Sherman Island (Department of Water Resources), Twitchell Island (Department of Water Resources), and Prospect Island (Bureau of Land Management). DWR is still acquiring lands on Sherman Island; a 370 acre parcel (Mayberry Farms) was acquired in September. Still pending is the private Delta Wetlands project which would convert portions of Bouldin and Holland Islands to habitat, and convert Webb and Bacon Islands for reservoir use.

The Yolo Bypass Wetlands Enhancement Project (Yolo Basin Foundation, Department of Fish and Game and U.S. Fish and Wildlife Service) has been constructed and expanded by an additional 180 acres (October 1996).

Within the Stone Lakes Wildlife Refuge, approximately 250 acres of agricultural lands was restored to seasonal wetland habitat during June 1996 (portions of 457 acre Lewis-Vyronis Property acquired in 1995).

3. Conversion of Agricultural Lands in the Primary Zone to Other Uses:

A project approved in Solano County will convert 40 acres of agricultural land to aquaculture in the form of 48 fish ponds (June).

Agricultural lands are still proposed for conversion for a new wastewater treatment plant east of Rio Vista (Solano County) and for disposal of treated wastewater and sludge on Jersey Island (Contra Costa County); there was no action on either of these projects during 1996.

Proposals to convert agricultural lands to residential development are still under consideration in Yolo County near Clarksburg and in Sacramento County near Courtland; there has been no action on either of these projects during 1996.

4. Restoring Delta Habitat:

State and federal agencies and nonprofit groups have continued to acquire land and pursue programs to restore those lands to Delta habitat (Yolo Bypass Wetlands

project; acquisition and restoration in the Stone Lakes Wildlife Refuge and Cosumnes River Preserve, Prospect Island, and Reconnaissance Plan for Little Holland Tract and Liberty Island).

In March, Wildlife Conservation Board purchased a wetland conservation easement for 261 acres of historic wetlands on Empire Tract, San Joaquin County. Commercial agriculture will be phased out under the new easement.

In April, Department of Water Resources re-installed the acoustic fish barrier across the mouth of Georgiana Slough to continue the experiment to deter juvenile salmon from entering the Central Delta and keeping them traveling downriver towards the Pacific Ocean.

The Commission staff has been actively participating in the San Francisco Estuary Project's Delta work group which has been developing a consensus-based program for protecting and enhancing in-channel islands, and the remnants of natural habitat upon those islands.

5. Improving Levee Protection and Water Quality:

a. Levee Protection:

A joint Corps/Reclamation Board project to carry out levee rehabilitation work along 2.6 miles of the lower Sacramento River (Miner, Elk, Steamboat and Sutter Sloughs) was approved in November.

The Commission has continued to participate in the Secretary for Resources' meetings to coordinate and streamline permitting associated with Delta levee maintenance. To date, the communication and working relationships among the staff of the regulatory agencies has improved, but achievements have been limited.

The Commission directed staff to carry out preliminary research on the cost of preparing a thorough study of the cost and amount of material needed to raise Delta non-project levees from the Hazard Mitigation Plan levels to the Corps' PL-99 standards. Based on staff's estimate of the cost of preparing a detailed study, the study was shelved.

The Commission took a position of support on AB 360 which would allow project levees to be eligible for levee subvention funds.

A significant levee upgrade project was approved in the Secondary Zone to protect portions of the City of Stockton from 100 year flood (June).

b. Water Quality:

The Central Valley Regional Water Quality Control Board staff is preparing draft General Orders to address dredging in the Delta waterways; the environmental document is being circulated.

In August, the Central Valley Regional Water Quality Control Board modified the waste discharge requirements to allow maintenance dredging of the Stockton Deepwater Ship Channel.

Department of Water Resources' South Delta Temporary Barriers program, designed to protect South Delta water quality, was extended until 2001. The project installs seasonal barriers on Old River, Middle River, and Grant Line Canal.

The Commission was briefed in February on the Department of Fish and Game's participation in the Oil Spill Prevention and Response Program. The program is being expanded in the Delta area, particularly for waterways near the deepwater ship channels and the Ports of Stockton and Sacramento.

The Commission was briefed in February on the new Deltakeeper program, a nonprofit organization dedicated to protecting water quality in the Delta.

6. Providing Increased Public Access and Recreation Opportunities:

The Commission continued its study of existing recreational use of the Delta; Department of Boating and Waterways is co-sponsor of the study. The Department of Parks and Recreation is carrying out the survey. The survey will be completed in 1997.

In the Primary Zone, two marinas in Contra Costa County were approved for restoration and/or enlargement including: Linquist Marina to add 37 berths (June) and Orwood Resort to add hookups for 80 campsites, add dry boat storage and build a new sewage treatment facility (October).

The San Joaquin County permit issued to Tower Park Marina for a recreational vehicle park expired in March.

The Commission discussed and directed staff to work with Department of Fish and Game and East Bay Regional Plan District (EBRPD) on the subject of protecting existing hunting uses on water-covered lands in the Primary Zone at Big Break (November). The eastern half of Big Break was acquired by EBRPD in October of 1995. This discussion continues.

Significant progress continues to be made on waterfront plans for the cities in the Secondary Zone including Sacramento, West Sacramento, and Stockton. The City of Stockton prepared and adopted a Waterfront Vision and Action Plan in January which would support public access and recreation along the downtown waterfront. In August, the City of Sacramento authorized 1.2 million dollars worth of waterfront improvements including a pedestrian promenade and 80 boat slips.

In the Secondary Zone of Solano County, the Western Railroad Museum facility will be enlarged (the train tracks extend into the Primary Zone) (June).

In the Secondary Zone, renovation of the Sugar Barge Marina (Bethel Island, Contra Costa County) was approved in July.

In the Secondary Zone, an EBRPD trail from the Antioch Pier to Big Creek (Contra Costa County) was approved in February.

New large projects approved in the Secondary Zone include recreational components: Mossdale Village (Lathrop, San Joaquin County) will include a commercial marina and 99 acres of open space (April); Gold Rush City (Lathrop, San Joaquin County) will include a marina, an RV Park, a campground, and 1,183 acres of open space (April); and Discovery Bay West (Contra Costa County) will include a marina, and 200 acres of open space (July).

Legal Issues:

The Commission was sued by Bio Gro, a division of Wheelabrator Industries, over Utilities and Infrastructure Policy P-3, which precludes placement of sewage effluent and sewage sludge in the Primary Zone of the Delta. One suit was filed in State Court and one filed in Federal Court.

The State suit was heard on October 13, 1995. On November 14, 1995, Judge Thomas Cecil found that plaintiff Bio Gro had standing to sue on the "underground regulation" question; that Policy P-3 constitutes a "regulation" under the Administrative Procedures Act (APA); that the Delta Protection Act contains no express exemption from the APA's requirements for the Commission's Plan; and that the Court would not imply such an exemption.

In February, the Commission directed staff to proceed with preparation of a Plan amendment and new regulation to address the issues in Utilities and Infrastructure Policy P-3. The Commission approved the amendment and regulation at its September meeting.

In April and May, the Commission considered and then directed the Attorney General to prepare and file with the Supreme Court a "Friend of the Court" brief in the case *Akins vs. People of the State of California* (No. 3 Civ. C015891).

Actions Supporting the Goals of the Act:

The Commission continued to proceed on several fronts with activities and actions which promote the goals and programs outlined in the Act:

- * The Commission continues to act as sponsor for the San Francisco Estuary Project's regional meetings in the Delta to forward the goals and programs in the Comprehensive Conservation and Management Plan for the Bay and Delta. The group has been focused on protection and enhancement of in-channel islands, the last remnants of historic Delta habitat.

- * The Commission continues to prepare a geographic information system (GIS) to monitor activities and land use changes in the Delta as directed by the Act. This information is available to the public in the Commission's office and through the Internet (June).

- * The Commission continued work with Department of Parks and Recreation on preparation of a statistically valid recreational use survey of the Delta. The survey will be completed in Spring of 1997.

- * Staff prepares a monthly project monitoring memo which lists and describes pending projects (local, state, and federal projects) in the Delta area.

* The Commission monitors activities associated with the San Luis Drain and release of agricultural wastewaters into the Delta. The Commission position, adopted in 1995, is support of a resolution of the issue in a manner that protects the environmental values of the Delta.

* The Commission and staff have actively participated in the CALFED planning process, particularly in light of how the program might affect agriculture, wildlife habitat, recreation, and levees in the Delta Primary Zone.

* The Commission held hearings and adopted a strategy for developing a funding and regulatory program to allow swift removal of abandoned vessels from the Delta waterways (June). This concept has widespread support from various sectors of the Delta. Staff will work with Delta legislators to seek new legislation in the upcoming session.

* The Commission received testimony and took a position to support legislation to expand the State's exotic plant eradication program to include removal of the plant *Egeria densa*, now growing in the western Delta waterways.

Appeals:

No local government decisions were appealed to the Commission in 1996.

Commissioner Members:

The Commission is made up of 19 members designated in the Act representing six State agencies, five Delta counties, three councils of governments, and five reclamation and water district representatives. Patrick McCarty, who represents the Central Delta Water Agency, serves as Chair and Sacramento City Councilmember Heather Fargo serves as Vice Chair. A complete roster of the Commission members during 1996 is attached.

Subcommittees:

The Commission has created several subcommittees to address specific tasks and issues:

Budget, Finance, Operations and Administration Subcommittee: Commissioners Calone, Sekelsky, Salmon, Simas, McGowan, Ferreira, and Yates, and Chairman McCarty.

Legislative Subcommittee provides advice on proposed and pending legislation: Commissioners Torlakson, Curry and Vice Chair Fargo.

Levee Subcommittee addresses special concerns associated with Delta Levees: Commissioners Torlakson, Potter, Broddrick, Curry, and Mello, and Chairman McCarty.

Recreational Users Study Oversight Subcommittee provides oversight for the survey project: Commissioners Nottoli, Murphy, Curry, and public members.

San Luis Drain Subcommittee appointed to study the San Luis Drain issue: Commissioners Torlakson, Potter, Yates, Broddrick, and Thomson.

Administration

The Commission offices are located in Walnut Grove in Sacramento County. Margit Aramburu is the Executive Director, with Debra Eddy as full time support staff. Supplemental assistance is provided by part-time student assistants, Colleen McMahon and Marnie Kagan. Richard Frank, Supervising Deputy Attorney with the Attorney General's Office, provides legal support for the Commission, with assistance from Christine Sproul. Operating costs of the Commission are approximately \$14,500 per month. The Commission is funded by funds from three special funds; no general funds are used to support the Commission.